

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
MAPA Broadcasting, L.L.C.)	File No. EB-01-OR-138
WSLA(AM))	NAL/Acct. No. 200132620005
Slidell, Louisiana)	FRN 0005-0234-60

FORFEITURE ORDER

Adopted: December 17, 2001

Released: December 19, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand five hundred dollars (\$2,500) to MAPA Broadcasting, L.L.C. (“MAPA”), licensee of Station WSLA(AM), Slidell, Louisiana, for willful violations of Sections 11.35(a) and 73.49 of the Commission’s Rules (“Rules”).¹ The noted violations involve MAPA’s failure to install operational Emergency Alert System (“EAS”) equipment at WSLA(AM) and its failure to enclose WSLA(AM)’s antenna tower within an effective locked fence or other enclosure.

2. On July 24, 2001, the Commission’s New Orleans, Louisiana, Field Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to MAPA for a forfeiture in the amount of fifteen thousand dollars (\$15,000).² MAPA filed a response to the NAL on September 10, 2001.

II. BACKGROUND

3. On March 14, 2001, agents from the New Orleans Office inspected WSLA(AM). During the inspection, the agents determined that no EAS equipment was installed. In addition, the agents observed that the gate to the fence surrounding WSLA(AM)’s antenna tower was unlocked. The agents further observed that, although WSLA(AM)’s antenna tower was grounded at the base, the antenna included a “skirt” surrounding the tower. The “skirt” had radio frequency potential and was within reach from the ground near the base of the tower.

4. On April 26, 2001, the New Orleans Office issued a Notice of Violation (“NOV”) citing MAPA for violations of Sections 11.35(a) and 73.49. On May 14 and May 21, 2001, MAPA submitted responses to the NOV stating that it had ordered EAS equipment and locked the tower gate.

¹ 47 C.F.R. §§ 11.35(a) and 73.49.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132620005 (Enf. Bur., New Orleans Office, released July 24, 2001).

5. On July 24, 2001, the New Orleans Office issued the subject *NAL* to MAPA for failure to install operational EAS equipment in willful violation of Section 11.35(a) of the Rules and failure to enclose the AM antenna tower within an effective locked fence or other enclosure in willful violation of Section 73.49 of the Rules.

6. On September 10, 2001, the Commission received MAPA's response to the *NAL*. In its response, MAPA argues that if there were any violations, they were not willful. MAPA states that at the time of the inspection, the gate to the fence surrounding the tower was left "temporarily unlocked" by the yard maintenance person, despite being cautioned not to leave the gate open. MAPA also argues that the tower is located behind its building, and that "no improved areas are adjacent, just forest/swamp." MAPA admits that with the gate open, an adult could enter the enclosure, touch the lead wire to the antenna harness and receive a skin burn. MAPA adds that this has never happened at the station. In addition, MAPA indicates that at the time of the inspection, the station had a "modified EBS unit with an AM tuner" which allowed reception of EAS transmissions, but not transmitting functions. MAPA states that all EAS advisories are posted in the control room and the station logs include EBS logging. MAPA asserts that in 1998, an agent from the New Orleans Office conducted an "EAS Equipment Inspection" at WSLA(AM), and that it never received communication concerning its equipment. Thus, MAPA assumed its equipment was acceptable. Further, MAPA claims that upon receiving the *NOV*, it obtained a cost estimate for an EAS unit. MAPA claims that the company that provided it with a cost estimate also stated that future EAS developments may result in new equipment being required, and in light of MAPA's financial condition, it chose to seek guidance from the Commission. MAPA states that after reading various trade publications, it is in a "state of some confusion" as to the development of EAS. Finally, MAPA appears to seek reduction of the forfeiture amount, on the basis that that payment of the forfeiture would result in a financial hardship for the station.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining MAPA's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

8. Section 11.35(a) of the Rules requires that broadcast stations install EAS encoders, EAS decoders and attention signal generating and receiving equipment so that the monitoring and transmitting functions are available during the times the stations are in operation. Section 73.49 of the Rules provides that AM antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. MAPA argues that the violations, if any, were not willful. We disagree. Section 312(f)(1) of the Act provides that "the term 'willful,' when used with reference to the commission or omission of any act, means the conscious or deliberate commission or omission of such

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission”⁶ This definition applies to the term “willful” as used in Section 503(b) of the Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). We therefore conclude that the violations were willful. MAPA states that the gate to the fence was “temporarily unlocked” and that no improved areas are adjacent to the tower. Neither of these statements have any bearing on the fact that the gate to the fence was unlocked at the time of the inspection. Section 73.49 requires the fence to be locked.

9. Moreover, MAPA’s use of a “modified EBS unit with an AM tuner” does not comply with Section 11.35(a) of the Rules, which requires stations to install EAS encoders, EAS decoders and attention signal generating and receiving equipment. With respect to MAPA’s claim that it was unclear as to the Commission’s EAS requirements, this does not warrant a reduction of the forfeiture amount. Commission licensees are responsible for knowing and adhering to the statutes and rules that apply to them. Lack of knowledge of those statutes and rules is not sufficient justification for reducing a forfeiture imposed for violating them. *See Sitka Broadcasting Company Inc.*, 70 FCC 2d 2375, 2378 (1979).

10. MAPA also argues that payment of the \$15,000 forfeiture would result in a financial hardship for the station and provides tax returns for 1998, 1999 and 2000 in support of this argument. Although other factors can be considered, the Commission has held that a licensee’s gross income is generally the best indicator of its ability to pay a forfeiture. *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992). In view of the gross revenues indicated by MAPA’s tax returns, we conclude that it is appropriate to reduce the forfeiture amount from \$15,000 to \$2,500.

11. We have examined MAPA’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that MAPA willfully violated Sections 11.35(a) and 73.49 of the Rules, but we reduce the forfeiture amount from \$15,000 to \$2,500.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁷ MAPA Broadcasting, L.L.C. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand five hundred dollars (\$2,500) for failure to install its EAS equipment so the monitoring and transmitting functions are available in willful violation of Section 11.35(a) of the Rules and failure to enclose its AM antenna tower within an effective locked fence in willful violation of Section 73.49 of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁸ Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago,

⁶ 47 U.S.C. § 312(f)(1).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁸ 47 U.S.C. § 504(a).

Illinois 60673-7482. The payment should note the NAL/Acct. No. 200132620005, and the FRN 0005-0234-60. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to MAPA Broadcasting L.L.C., WSLA(AM), P.O. Box 1175, 38230 Coast Blvd., Slidell, Louisiana, 70459.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.